

1 ORDINANCE AUTHORIZING THE ISSUANCE AND SALE BY  
2 THE CITY OF FORT WAYNE, INDIANA OF \$825,000.00  
3 AGGREGATE PRINCIPAL AMOUNT INDUSTRIAL  
4 DEVELOPMENT REVENUE REFUNDING BONDS (KEEBLER  
5 COMPANY PROJECT), SERIES 1993 FOR THE PURPOSE  
6 OF REFUNDING CERTAIN OUTSTANDING INDUSTRIAL  
7 DEVELOPMENT REVENUE BONDS OF SAID CITY ISSUED  
8 FOR THE BENEFIT OF KEEBLER COMPANY;  
9 AUTHORIZING THE EXECUTION, DELIVERY AND  
10 PERFORMANCE OF AN INDENTURE OF TRUST, A LOAN  
11 AGREEMENT, A TAX EXEMPTION CERTIFICATE AND  
12 AGREEMENT AND A BOND PURCHASE AGREEMENT;  
13 AUTHORIZING THE EXECUTION AND DELIVERY OF AN  
14 OFFICIAL STATEMENT; AND AUTHORIZING OTHER  
15 MATTERS PERTAINING THERETO.

16 WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is  
17 authorized by Indiana Code 36-7-12, as supplemented and  
18 amended (the "Act"), to issue its revenue bonds to finance  
19 industrial and commercial development facilities; and

20 WHEREAS, under the Act, the Issuer is empowered to refund  
21 revenue bonds previously issued by it through the issuance of  
22 revenue refunding bonds; and

23 WHEREAS, the Issuer has heretofore issued and sold its  
24 Industrial Development Revenue Bonds (Keebler Company  
25 Project), Series 1980, in the aggregate principal amount of  
26 \$825,000 (the "Prior Bonds"), the proceeds of which were used  
27 on behalf of Keebler Company, a Delaware corporation (the  
28 "Company"), in order to finance the costs of the acquisition  
29 of certain land within the corporate limits of the City of  
30 Fort Wayne, located at 2021 Research Drive, Interstate  
31 Industrial Park, Fort Wayne, Indiana, 46808, and the  
32 acquisition, construction and installation thereon of  
warehouse and distribution facilities, and the equipment and  
machinery for use therein (the "Project").

WHEREAS, the Company now proposes to cause the Prior Bonds  
to be redeemed in whole and, in furtherance of the purposes  
set forth in the Act, the Issuer wishes to refund the Prior  
Bonds through the issuance and sale of its Industrial  
Development Revenue Refunding Bonds (Keebler Company Project),



1 Series 1993 in the aggregate principal amount of \$825,000.00  
2 (the "Bonds"), such amount being the entire outstanding  
3 principal amount of the Prior Bonds.

4 WHEREAS, the Common Council is the elected legislative body  
5 of Fort Wayne, Indiana and is the applicable elected  
6 representative required to approve the issuance of the  
7 hereinafter-described Bonds within the meaning of Section  
8 147(f) of the Internal Revenue Code of 1986, as amended; and

9 WHEREAS, the Fort Wayne Economic Development Commission has  
10 performed all action required by it of the Act preliminary to  
11 the adoption of this Bond Ordinance and has approved and  
12 forwarded to this Common Council forms of the documents  
13 referred to in the following paragraph; and

14 WHEREAS, notice of a public hearing with respect to the  
15 proposed issuance of the Bonds was published in the Journal  
16 Gazette, a newspaper of general circulation in the City of  
17 Fort Wayne; and

18 WHEREAS, on January 11, 1993, said public hearing was held  
19 before the Fort Wayne Economic Development Commission and an  
20 opportunity was provided for interested persons to present  
21 arguments for and against the issuance of the Bonds; and

22 WHEREAS, a Loan Agreement, to be dated as of January 1,  
23 1993 (the "Agreement") with respect to the refunding will be  
24 executed by and between the Company and the Issuer, whereby  
25 the Company will covenant and agree to make payments  
26 sufficient to provide for the payment of principal of,  
27 interest on and other amounts payable on the Bonds, as and  
28 when the same become due and payable; and

29 WHEREAS, the Bonds will be issued under and pursuant to,  
30 and are to be secured by, an Indenture of Trust, to be dated  
31 as January 1, 1993 (the "Indenture") by and between the Issuer  
32 and the Fort Wayne National Bank, Fort Wayne, Indiana, as



trustee (the "Trustee"); and

1       WHEREAS, the Issuer, the Company and the Trustee will enter  
2       into a Tax Exemption Certificate and Agreement, to be dated  
3       the date of the issuance of the Bonds (the "Tax Agreement"),  
4       governing the investment of the gross proceeds of the Bonds  
5       and certain other matters relating to the federal tax  
6       exemption of the Bonds; and

7       WHEREAS, the Bonds will be sold pursuant to a Bond Purchase  
8       Agreement (the "Bond Purchase Agreement") among the Issuer,  
9       the Company and The Chicago Corporation (the "Underwriter");  
10      and

11      WHEREAS, the Bonds will be offered for sale, together with  
12      other municipal bond obligations for the Company, pursuant to  
13      an Official Statement relating to the Bonds and such other  
14      obligations (the "Official Statement") in substantially the  
15      form of a Preliminary Official Statement relating to the Bonds  
16      and such other obligations (the "Preliminary Official  
17      Statement") distributed in connection with the marketing of  
18      the Bonds; and

19      WHEREAS, forms of the Agreement, the Indenture, the Tax  
20      Agreement, the Bond Purchase Agreement and the Preliminary  
21      Official Statement have been presented to and are before this  
22      meeting; and

23      WHEREAS, it is necessary that certain other instruments be  
24      executed and certain other actions be taken in connection  
25      therewith;

26      NOW, THEREFORE Be It Ordained by the Common Council of the  
27      City of Fort Wayne, Indiana, as follows:

28      Section 1.       Pursuant to the Act, the refunding of the  
29      Prior Bonds through the issuance and sale of the Bonds in  
30      accordance with the terms of the Agreement and the Indenture  
31      is hereby authorized. Such refunding is hereby determined to  
32



1 be in furtherance of the public purposes set forth in the Act  
2 and the loan of the proceeds to the Company in accordance with  
3 the terms of the Agreement is in the public interest. The  
4 Prior Bonds shall be called for redemption pursuant to Article  
5 III of the indenture under which the Prior Bonds were issued.  
6 The Prior Bonds shall be redeemed at an optional redemption  
7 price of 102.4% of the principal amount thereof, plus accrued  
8 interest to the redemption date, which shall be the next date  
9 for which the Bonds can be optionally redeemed pursuant to the  
10 indenture under which the Prior Bonds were issued.

11 Section 2. The proposed issuance and sale of the Bonds  
12 as provided in the preambles hereto is approved. In order to  
13 refund the outstanding principal amount of the Prior Bonds,  
14 the Bonds be and the same are hereby authorized and ordered  
15 to be issued in the aggregate principal amount of \$825,000.00  
16 pursuant to the Indenture. The Bonds shall be designated  
17 "City of Fort Wayne, Indiana Industrial Development Revenue  
18 Refunding Bonds (Keebler Company Project), Series 1993." The  
19 Bonds shall bear interest at a fixed rate <sup>OR RATES</sup> set forth in the  
20 Indenture, as executed, not to exceed 9.00% per annum. The  
21 Bonds shall be dated January 1, 1993 and shall mature <sup>NO LATER THAN</sup> on March  
22 1, 2005, subject to such optional and mandatory redemption  
23 provisions as shall be set forth in the Indenture, as approved  
24 at this meeting. Interest on the Bonds shall be payable on  
25 March 1 and September 1 of each year. The Bonds shall be  
26 substantially in the form and in the denominations and shall  
27 have the other terms and provisions (including, without  
28 limitation, provisions relating to their registration,  
29 authentication and redemption) provided for in the Indenture.

30 Section 3. The Mayor of the Issuer is hereby  
31 authorized, empowered and directed to execute the Bonds by his  
32 manual or facsimile signature and the City Clerk of the Issuer



1 is hereby authorized, empowered and directed to attest the  
2 Bonds by his or her manual or facsimile signature, and the  
3 official seal of the Issuer or the facsimile thereof shall be  
4 affixed thereto or imprinted thereon, and the Mayor and the  
5 City Clerk of the Issuer shall cause the Bonds, as so executed  
6 and attested, to be delivered to the Trustee for  
7 authentication under the Indenture. In case any official  
8 whose signature should appear on any Bond shall cease to be  
9 such official before the delivery of such Bond, such signature  
10 shall nevertheless be valid and sufficient for all purposes,  
11 the same as if he or she had remained in office until  
12 delivery.

13 Section 4. The Indenture is hereby approved in  
14 substantially the form submitted to this meeting, and the  
15 Mayor of the Issuer is hereby authorized, empowered and  
16 directed to execute, and the City Clerk is hereby authorized,  
17 empowered and directed to attest and to affix the official  
18 seal to, and the Mayor and the City Clerk are each hereby  
19 authorized, empowered and directed to deliver the Indenture  
20 in substantially the form presented to this meeting or with  
21 such changes therein as shall be approved by the Mayor, his  
22 execution to constitute conclusive evidence of such approval  
23 of any such changes. The Indenture shall constitute, and is  
24 hereby made, a part of this Ordinance, and a copy of the  
25 Indenture shall be placed in the official records of the  
26 Issuer, and shall be made available for public inspection at  
27 the office of the City Clerk of the Issuer.

28 Section 5. The Agreement is hereby approved in  
29 substantially the form submitted to this meeting, and the  
30 Mayor of the Issuer is hereby authorized, empowered and  
31 directed to execute, and the City Clerk is hereby authorized,  
32 empowered and directed to attest and to affix the official



1 seal to, and the Mayor and the City Clerk are each hereby  
2 authorized, empowered and directed to deliver the Agreement  
3 in substantially the form presented to this meeting or with  
4 such changes therein as shall be approved by the Mayor, his  
5 execution to constitute conclusive evidence of such approval  
6 of any such changes. The Agreement shall constitute, and is  
7 hereby made, a part of this Ordinance, and a copy of the  
8 Agreement shall be placed in the official records of the  
9 Issuer, and shall be made available for public inspection at  
10 the office of the City Clerk of the Issuer.

11 Section 6. The Tax Agreement is hereby approved in  
12 substantially the form submitted to this meeting, and the  
13 Mayor of the Issuer is hereby authorized, empowered and  
14 directed to execute and deliver the Tax Agreement in  
15 substantially the form presented to this meeting or with such  
16 changes therein as shall be approved by the Mayor, his  
17 execution to constitute conclusive evidence of such approval  
18 of any such changes. The Tax Agreement shall constitute, and  
19 is hereby made, a part of this Ordinance, and a copy of the  
20 Tax Agreement shall be placed in the official records of the  
21 Issuer, and shall be made available for public inspection at  
22 the office of the City Clerk of the Issuer.

23 Section 7. Subject only to the provisions of Section 8  
24 below, the Bond Purchase Agreement is hereby approved in  
25 substantially the form submitted to this meeting, and the  
26 Mayor of the Issuer is hereby authorized, empowered and  
27 directed to execute and deliver the Bond Purchase Agreement  
28 in substantially the form presented to this meeting or with  
29 such changes therein as shall be approved by the Mayor, his  
30 execution to constitute conclusive evidence of such approval  
31 of any such changes. The Bond Purchase Agreement shall  
32 constitute, and is hereby made, a part of this Ordinance, and



1 a copy of the Bond Purchase Agreement shall be placed in the  
2 official records of the Issuer, and shall be made available  
3 for public inspection at the office of the City Clerk of the  
4 Issuer.

5 Section 8. The sale of the Bonds to the Underwriter  
6 pursuant to the Bond Purchase Agreement is hereby authorized  
7 and approved; provided that the purchase price for the Bonds  
8 shall be at least 98% of the principal amount of the Bonds  
9 (exclusive of any original issue discount), plus accrued  
10 interest to the date of issuance and delivery of the Bonds.

11 Section 9. The distribution by the Underwriter of the  
12 Preliminary Official Statement relating to the Bonds is hereby  
13 authorized, ratified, confirmed and approved. The Mayor of  
14 the Issuer is hereby authorized, empowered and directed to  
15 execute and deliver the Official Statement, in substantially  
16 the form presented to this meeting or with such changes  
17 therein as shall be approved by the Mayor, his execution to  
18 constitute conclusive evidence of such approval of any such  
19 changes. The Preliminary Official Statement shall constitute,  
20 and is hereby made, a part of this Ordinance, and a copy of  
21 the Preliminary Official Statement shall be placed in the  
22 official records of the Issuer, and shall be made available  
23 for public inspection at the office of the City Clerk of the  
24 Issuer.

25 Section 10. The Bonds may be initially issued in book-  
26 entry form and registered in the name of The Depository Trust  
27 Company, New York, New York ("DTC"), or its nominee, as  
28 securities depository for the Bonds. The Mayor is hereby  
29 authorized, empowered and directed to execute and deliver an  
30 agreement with DTC and any other necessary parties in order  
31 to effect such book-entry registration.  
32

Section 11. The Mayor and the City Clerk of the Issuer



1 are hereby empowered and directed to execute and deliver all  
2 other documents and instruments which may be required,  
3 necessary or desirable in connection with the issuance and  
4 delivery of the Bonds, the execution and delivery of the  
5 Indenture, the Agreement, the Tax Agreement and the Bond  
6 Purchase Agreement, the performance of the rights, duties and  
7 obligations of the Issuer under any of the foregoing, the  
8 refunding of the Prior Bonds and the release of the lien of  
9 the indenture under which the Prior Bonds were issued and  
10 related instruments.

11 Section 12. In the absence of the Mayor or City Clerk of  
12 the Issuer, any none and none may execute any agreements  
13 or take any actions of the Mayor or City Clerk, respectively,  
14 described herein.

15 Section 13. It is hereby found, determined and declared  
16 that the Bonds and interest and premium, if any, thereon do  
17 not constitute an indebtedness or a charge against the general  
18 credit or taxing power of the Issuer, the State of Indiana or  
19 any political subdivision thereof within the meaning of any  
20 constitutional provision or statutory limitation and do not  
21 constitute nor give rise to any pecuniary liability of the  
22 Issuer, the State of Indiana or any political subdivision  
23 thereof, but the Bonds, are special, limited obligations of  
24 the Issuer, the principal of, premium, if any, and interest  
25 on which shall be payable solely and only from revenues and  
26 receipts derived from the payments by the Company.

27 Section 14. The appointment of Fort Wayne National Bank,  
28 Fort Wayne, Indiana as trustee under the Indenture is hereby  
29 approved.  
30

31 Section 15. The appointment of Chapman and Cutler, as  
32 Bond Counsel and Underwriter's Counsel, is hereby approved.

Section 16. The Issuer hereby elects to have the  
provisions of Section 103(b)(6)(D) of the Internal Revenue



Code of 1954 apply to the Bonds.

1       Section 17.       That the Common Council, as the duly  
2 applicable elected representative of the Issuer within the  
3 meaning of Section 147(f) of the Internal Revenue Code of  
4 1986, as amended (the "Code"), hereby approves the issuance  
5 of the Bonds for the purposes and on the terms and conditions  
6 set forth herein.

7       Section 18.       All acts of the officials of the Issuer  
8 which are in conformity with the purposes and intent of this  
9 Ordinance and in furtherance of the issuance and sale of the  
10 Bonds and the financing of the Project be, and the same hereby  
11 are, in all respects, approved and confirmed.

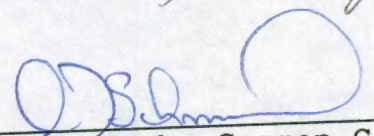
12       Section 19.       After the Bonds are issued, this Ordinance  
13 shall be and remain irrepealable until the Bonds and the  
14 interest thereon shall have been fully paid, cancelled and  
15 discharged.

16       Section 20.       The provisions of this Ordinance are hereby  
17 declared to be separable and if any section, phrase or  
18 provision shall for any reason be declared to be invalid, such  
19 declaration shall not affect the validity of the remainder of  
20 the sections, phrases and provisions.

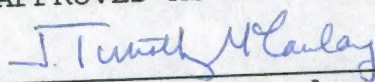
21       Section 21.       All ordinances, resolutions and parts  
22 thereof in conflict herewith are hereby repealed to the extent  
23 of such conflict.

24       Section 22.       This Ordinance shall become effective  
25 immediately upon adoption.

26       Passed and adopted this 26th day of January,  
27 1993.

28  
29  
30         
31       Member of the Common Council

32       APPROVED AS TO FORM AND LEGALITY

  
      J. Timothy McCaulay, City Attorney  
      Dated this 11th day of January, 1993.



Read the first time in full and on motion by Schmidt, seconded by \_\_\_\_\_, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 1-12-93

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Schmidt, seconded by \_\_\_\_\_, and duly adopted, placed on its passage. PASSED ~~Lost~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>8</u>			<u>1</u>
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA	<u>✓</u>			
HENRY				<u>✓</u>
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 1-26-93

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL) \_\_\_\_\_ (SPECIAL) \_\_\_\_\_ (ZONING) \_\_\_\_\_ ORDINANCE RESOLUTION NO. 1-08-93 on the 26th day of January, 1993

ATTEST:

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

(SEAL)  
Mark C. GiaQuinta  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of January, 1993, at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 27th day of January, 1993, at the hour of 11:45 o'clock A. M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



# MOTION TO AMEND ORDINANCE

On behalf of Keebler Company, we are submitting a motion before the City of Fort Wayne Common Council to amend the Ordinance introduced at a regular meeting of said Council on January 12, 1993 entitled:

ORDINANCE AUTHORIZING THE ISSUANCE AND SALE BY THE CITY OF FORT WAYNE, INDIANA OF \$825,000.00 AGGREGATE PRINCIPAL AMOUNT INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BONDS (KEEBLER COMPANY PROJECT), SERIES 1993 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING INDUSTRIAL DEVELOPMENT REVENUE BONDS OF SAID CITY ISSUED FOR THE BENEFIT OF KEEBLER COMPANY; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN INDENTURE OF TRUST, A LOAN AGREEMENT, A TAX EXEMPTION CERTIFICATE AND AGREEMENT AND A BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT; AND AUTHORIZING OTHER MATTERS PERTAINING THERETO.

The proposed amendment is as follows:

(1) On page 4 of the Ordinance, the word "on" should be changed to "no later than." This amendment will allow Keebler the ability to have bonds issued with serial maturities if market conditions dictate.

(2) On line 19, after the words, "fixed rate," the words "or rates" should be added. Thus, the affected sentence will read: "The Bonds shall bear interest at a fixed rate or rates set forth in the Indenture as executed, not to exceed 9.00% per annum." This amendment corresponds with amendment (1) which will allow Keebler the ability to have bonds issued with serial maturities if market conditions dictate.

If you have any questions or comments, please call Patricia Steinmeyer at (312) 845-5126.



FROM: CHAPMAN AND CUTLER

TO: 150749267#912194227433

JAN 15, 1993

8:22AM P.01

Law Offices of

**CHAPMAN AND CUTLER**

111 West Monroe Street, Chicago, Illinois 60603

TWX 910-221-2103 Telex 206281

FAX: (312) 701-2361

Telephone (312) 845-3000

JAN 14 3 56 PM '93

FAX DEPT.

**FACSIMILE COVER PAGE**

This transmission consists of 2 pages including cover page.

Please call (312) 845-3734 if you have any problems with this transmission.

Date: 1/14/93

To: Stan Levine

Firm/Company: Fort Wayne City Clerk's Office

Fax Number: 219-427-1214 422-7433

Confirm Number: 219-422-7431

From: Patricia E. Steinmeyer

Matter Number: 749267

Initials: PES

Extension: 5126

Comments:

Receipt Confirmed By: \_\_\_\_\_





## MEMORANDUM

TO: City Council Members

FROM: Karen A. Lee, Business Development Specialist *K.A.L.*

DATE: January 8, 1993

RE: January 12, 1993 - City Council Agenda

\*\*\*\*\*

An Industrial Revenue Bond was issued in 1980 to enable the Keebler Company to acquire land, construct and equip a distribution center in Interstate Industrial Park. Because of favorable bond interest rates the Keebler Company seeks to refund the initial obligation. This is one of 6 such bonds being refinanced by the company in various municipalities for the same purposes. The attached ordinance approves the transaction and authorizes execution of the related documents. The obligation being approved is a limited obligation bond and does not affect the city's bonding capacity.

*J-93-01-04*  
*(as amended)*

kal



Admn. Appr. \_\_\_\_\_

DIGEST SHEET

TITLE OF ORDINANCE Refunding Revenue Bonds

DEPARTMENT REQUESTING ORDINANCE Department of Economic Development

SYNOPSIS OF ORDINANCE Because of the favorable bond interest rates the Keebler Company seeks to refund their initial obligation. The attached ordinance approves the transaction and authorizes execution of the related documents. The obligation being approved is a limited obligation bond and does not affect the city's bonding capacity.

\_\_\_\_\_

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\_\_\_\_\_

EFFECT OF PASSAGE Will allow for the opportunity of lower interest rates.

EFFECT OF NON-PASSAGE Opposite of above.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \_\_\_\_\_

ASSIGNED TO COMMITTEE (PRESIDENT) Mark GiaQuinta



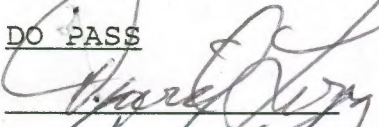
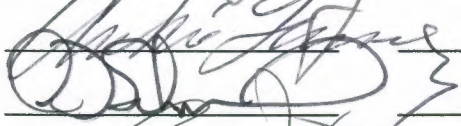
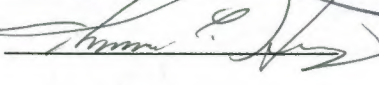
BILL NO. S-93-01-04 *(60 amended)*

REPORT OF THE COMMITTEE ON  
FINANCE

ARCHIE L. LUNSEY & DONALD J. SCHMIDT - CO-CHAIRPERSONS  
HENRY, EDMONDS, LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) ISSUANCE AND SALE OF  
\$825,000.00 AGGREGATE INDUSTRIAL DEVELOPMENT REVENUE REFUNDING  
BONDS (KEEBLER COMPANY PROJECT) SERIES 1993

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
			
			
			

DATED: 1-26-93.

Sandra E. Kennedy  
City Clerk